

U.S. District Court – District of Colorado
District of Colorado (Denver)
CIVIL DOCKET FOR CASE #: 1:18-cv-00206-WJM-STV

PS Audio, Inc. v. Allen
Assigned to: Judge William J. Martinez
Referred to: Magistrate Judge Scott T. Varholak
Demand: \$500,000
Cause: 15:44 Trademark Infringement

Date Filed: 01/26/2018
Jury Demand: Plaintiff
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

PS Audio, Inc.
a Colorado corporation

represented by **Mark Alan Larsen**
Larsen & Rico, PLLC
170 South Main Street
Suite 1150
Salt Lake City, UT 84101
801-364-6500
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Email: mlarsen@larsenrico.com
ATTORNEY TO BE NOTICED

V.

Defendant

James Allen
an individual

Date Filed	#	Docket Text
01/26/2018	<u>1</u>	COMPLAINT against All Plaintiffs (Filing fee \$ 400,Receipt Number 1082-5915253)Attorney Mark Alan Larsen added to party PS Audio, Inc.(pty:pla), filed by PS Audio, Inc.. (Attachments: # <u>1</u> Civil Cover Sheet Civil Cover Sheet, # <u>2</u> Summons Summons)(Larsen, Mark) (Entered: 01/26/2018)
01/26/2018	<u>2</u>	ADVISORY NOTICE OF NONCOMPLIANCE WITH COURT RULES/PROCEDURES:Mark A. Larsen. DO NOT REFILE THE DOCUMENT. Action to take – counsel must submit a change of contact request through the Attorney Services Portal Account pursuant to D.C.COLO.LAttyR 5(c) and 3.5 of the Electronic Case Filing Procedures (Civil cases).(Text Only Entry) (rsams,) (Entered: 01/26/2018)
01/26/2018	<u>3</u>	Case assigned to Magistrate Judge Scott T. Varholak. Text Only Entry. (rsams,) (Entered: 01/26/2018)
01/26/2018	<u>4</u>	SUMMONS issued by Clerk. (Attachments: # <u>1</u> Magistrate Judge Consent Form) (rsams,) (Entered: 01/26/2018)
01/26/2018	<u>5</u>	Report re Patent/Trademark: Report on the filing of an action emailed (NEF) to the Director of the U.S. Patent and Trademark Office. (rsams,) (Entered: 01/26/2018)
01/29/2018	<u>6</u>	AMENDED COMPLAINT against James Allen, filed by PS Audio, Inc..(Larsen, Mark) (Entered: 01/29/2018)

01/29/2018	<u>7</u>	ORDER setting Scheduling Conference for 3/30/2018 10:00 AM in Courtroom C203 before Magistrate Judge Scott T. Varholak. Consent Form due by 3/16/2018, by Magistrate Judge Scott T. Varholak on 1/29/2018. (jgonz,) (Entered: 01/30/2018)
02/16/2018	<u>8</u>	SUMMONS Returned Executed by PS Audio, Inc.. James Allen served on 2/15/2018, answer due 3/8/2018. (Larsen, Mark) (Entered: 02/16/2018)
03/10/2018	<u>9</u>	MOTION for Entry of Default as to <i>Defendant James Allen</i> by Plaintiff PS Audio, Inc.. (Larsen, Mark) Modified on 3/12/2018 to correct event(jgonz,). (Entered: 03/10/2018)
03/12/2018	<u>10</u>	CLERK'S NOTE REGARDING DEFAULT Default will not be entered as to James Allen re <u>9</u> MOTION for Entry of Default as to as: the affidavit or declaration required by Fed. R. Civ. P. 55(a) was not filed, the affidavit or declaration concerning defendant(s) military status required by Service Members Civil Relief Act was not filed, by Clerk. Text Only Entry (jgonz,) (Entered: 03/12/2018)
03/21/2018	<u>11</u>	MINUTE ORDER In light of <u>9</u> Motion for Entry of Default and given that Defendant has not yet filed an appearance, the Scheduling Conference set for 3/30/2018 10:00 AM is VACATED and RESET as a Telephonic Status Conference on 5/14/2018 10:30 AM before Magistrate Judge Scott T. Varholak. Counsel for Plaintiff shall initiate a call among all individuals participating in the conference and then call the Court at 303.335.2365 at the scheduled time. SO ORDERED, by Magistrate Judge Scott T. Varholak on 3/21/2018. Text Only Entry (stvlc1,) (Entered: 03/21/2018)
04/02/2018	<u>12</u>	MOTION for Default Judgment as to <i>Defendant James Allen</i> by Plaintiff PS Audio, Inc.. (Larsen, Mark) (Entered: 04/02/2018)
04/02/2018	<u>13</u>	BRIEF in Support of <u>12</u> MOTION for Default Judgment as to <i>Defendant James Allen</i> filed by Plaintiff PS Audio, Inc.. (Larsen, Mark) (Entered: 04/02/2018)
04/02/2018	<u>14</u>	AFFIDAVIT re <u>12</u> MOTION for Default Judgment as to <i>Defendant James Allen</i> by Plaintiff PS Audio, Inc.. (Larsen, Mark) (Entered: 04/02/2018)
04/02/2018	<u>15</u>	MOTION for Default Judgment as to by Plaintiff PS Audio, Inc.. (Attachments: # <u>1</u> Proposed Order (PDF Only))(Larsen, Mark) (Entered: 04/02/2018)
04/02/2018	<u>16</u>	MINUTE ORDER In light of <u>12</u> Motion for Default Judgment and pursuant to D.C.COLO.LCivR 40.1(c)(3)(a), the Court directs the Clerk of Court to reassign this case to a District Judge. SO ORDERED, by Magistrate Judge Scott T. Varholak on 4/02/2018. Text Only Entry (stvlc1,) (Entered: 04/02/2018)
04/02/2018	<u>17</u>	CASE REASSIGNED pursuant to 16 Minute Order. This case is randomly reassigned to Judge William J. Martinez. All future pleadings should be designated as 18-cv-00206-WJM. (Text Only Entry) (jgonz,) (Entered: 04/02/2018)
04/03/2018	<u>18</u>	ORDER REFERRING CASE to Magistrate Judge Scott T. Varholak. Magistrate Judge Varholak, or such other Magistrate Judge who may in the future be reassigned to this case, is designated to conduct ALLMTN proceedings pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and Fed.R.Civ.P. 72(a) and (b). Court sponsored alternative dispute resolution is governed by D.C.COLO.LCivR 16.6. On the recommendation or informal request of the Magistrate Judge or on the request of the parties by motion, the court may direct the parties to engage in an early neutral evaluation, a settlement conference, or another alternative dispute resolution proceeding. SO ORDERED by Judge William J. Martinez on 4/3/2018. Text Only Entry (wjmsc,) (Entered: 04/03/2018)
04/03/2018	<u>19</u>	ORDER: Counsel for the parties and all counsel who may later enter an appearance shall review and familiarize themselves with the undersigned's Revised Practice Standards (as most recently revised effective December 1, 2017 and as they may be amended from time to time), which may be downloaded here. SO ORDERED by Judge William J. Martinez on 4/

		3/2018. Text Only Entry (wjmssec,) (Entered: 04/03/2018)
05/07/2018	<u>20</u>	MINUTE ORDER In light of the pending Motions for Default Judgment, the Status Conference set for 5/14/2018 10:30 AM is VACATED. SO ORDERED, by Magistrate Judge Scott T. Varholak on 5/07/2018. Text Only Entry (stvlc1,) (Entered: 05/07/2018)
05/07/2018	<u>21</u>	MEMORANDUM regarding <u>12</u> MOTION for Default Judgment as to <i>Defendant James Allen</i> filed by PS Audio, Inc.. Motions referred to Magistrate Judge Scott T. Varholak by Judge William J. Martinez on 5/7/2018. Text Only Entry (wjmssec,) (Entered: 05/07/2018)
05/07/2018	<u>22</u>	MEMORANDUM regarding <u>15</u> MOTION for Default Judgment as to filed by PS Audio, Inc.. Motions referred to Magistrate Judge Scott T. Varholak by Judge William J. Martinez on 5/7/2018. Text Only Entry (wjmssec,) (Entered: 05/07/2018)
05/07/2018	<u>23</u>	ORDER This matter is before the Court on <u>12</u> Motion for Default Judgment and <u>15</u> Motion for Default Judgment. The two motions were filed on the same day and appear to be identical, with the exception that <u>15</u> Motion for Default Judgment includes a proposed order that was not included with <u>12</u> Motion for Default Judgment. Accordingly, <u>12</u> Motion for Default Judgment is DENIED AS MOOT. Pursuant to Rule 55, [e]ntry of a default judgment involves a two-step process. <i>Meyers v. Pfizer, Inc.</i> , 581 F. App'x 708, 710 (10th Cir. 2014) (citing Fed.R.Civ.P. 55(a)–(b)). If the defendant fails to timely respond to the complaint, the plaintiff can request entry of a default by the court clerk pursuant to Rule 55(a). Id. If the clerk enters a default, the plaintiff can [then] ask the court to grant a default judgment. Id. Here, Plaintiff has not yet completed step one of this process. i.e., Plaintiff has not obtained an entry of default from the Clerk of Court pursuant to Rule 55(a). Accordingly, the Court directs Plaintiff to file a motion for entry of default on or before May 21, 2018 and DEFERS RULING on <u>15</u> Motion for Default Judgment until the Clerk of Court has ruled upon the motion for entry of default. SO ORDERED, by Magistrate Judge Scott T. Varholak on 5/07/2018. Text Only Entry (stvlc1,) (Entered: 05/07/2018)
05/07/2018	<u>24</u>	MOTION for Entry of Default as to <i>Defendant James Allen</i> by Plaintiff PS Audio, Inc.. (Attachments: # <u>1</u> Proposed Document)(Larsen, Mark) (Entered: 05/07/2018)
05/08/2018	<u>25</u>	CLERK'S NOTE REGARDING DEFAULT – Default will not be entered as to James Allen re <u>24</u> MOTION for Entry of Default as to <i>Defendant James Allen</i> as: the affidavit or declaration required by Fed. R. Civ. P. 55(a) was not attached to Plaintiff's Request for Entry of Default, by Clerk. Text Only Entry. (jgonz,) (Entered: 05/08/2018)
05/08/2018	<u>26</u>	DECLARATION of <i>Mark A. Larsen</i> regarding MOTION for Entry of Default as to <i>Defendant James Allen</i> <u>24</u> by Plaintiff PS Audio, Inc.. (Larsen, Mark) (Entered: 05/08/2018)
05/09/2018	<u>27</u>	Second MOTION for Entry of Default as to <i>Defendant James Allen</i> by Plaintiff PS Audio, Inc.. (Attachments: # <u>1</u> Affidavit)(Larsen, Mark) (Entered: 05/09/2018)
05/15/2018	<u>28</u>	Clerk's ENTRY OF DEFAULT as to James Allen, by Clerk. Text Only Entry (jgonz,) (Entered: 05/15/2018)
07/02/2018	<u>29</u>	MINUTE ORDER re: <u>15</u> MOTION for Default Judgment as to filed by PS Audio, Inc. Plaintiff shall file a response to this Minute Order on or before 8/2/2018, addressing whether this Court should dismiss the action for lack of jurisdiction, or transfer it to another district, by Magistrate Judge Scott T. Varholak on 7/2/2018. (jgonz,) (Entered: 07/02/2018)
08/02/2018	<u>30</u>	RESPONSE to <u>29</u> Minute Order, on <i>Jurisdiction and Change of Venue</i> by Plaintiff PS Audio, Inc.. (Attachments: # <u>1</u> Affidavit Second Declaration of James Laib)(Larsen, Mark) (Entered: 08/02/2018)
08/10/2018	<u>31</u>	RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE by Magistrate Judge Scott T. Varholak on 8/10/2018. This Court respectfully RECOMMENDS that this matter be transferred

to the United States District Court for the Western District of Michigan, Southern Division, where it appears Defendant is domiciled. (jgonz,) (Entered: 08/10/2018)

09/17/2018

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ORDER Adopting August 10, 2018 31 Recommendation of United States Magistrate Judge. This case is transferred to the United States District Court for the Western District of Michigan, Southern Division. Plaintiff PS Audio, Inc.s Motion for Default Judgment (ECF No. 15) shall REMAIN PENDING, to be resolved by the transferee judge, by Judge William J. Martinez on 9/17/2018. (angar,) (Entered: 09/17/2018)